

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOSEPH AGATE,

Plaintiff,

- against -

CITY OF NEW YORK, et al.,

Defendants.

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ORDER

CV 04-5457 (CBA) (JO)

JAMES ORENSTEIN, Magistrate Judge:

As set forth in the minute entry for the telephone conference of March 2, 2007, the plaintiff anticipates further surgery that may affect his claim for damages; however, the worker's compensation proceedings that will determine the timing of that surgery remain unresolved, and there is no way to predict how much additional time will pass before the plaintiff can have the contemplated surgery. Once the surgery is completed, the parties agree that the defendants should have the opportunity to conduct an examination and deposition of the plaintiff for purposes of assessing the effect of the surgery on the plaintiff's claim for damages.

I conclude that a sufficient amount of time has passed that the prejudice to the plaintiff arising from the delay of the trial outweighs the potential prejudice to the defendants in conducting a trial before the surgery is completed. Moreover, to the extent that anticipated dispositive motion practice will take some time to resolve before a trial can be scheduled, it remains possible that the surgery, and the related supplemental discovery, can still be completed before a trial. Discovery is therefore closed without prejudice to the possibility of supplemental discovery discussed above.

The parties have submitted their proposed joint pretrial order. After examination of the order, I find that it substantially complies with the requirements of the Honorable Carol B.

Amon, United States District Judge. Accordingly, the joint pretrial order is accepted for filing and the action is deemed ready for trial, without prejudice to any potentially dispositive motion. The action will be tried in accordance with the discretion and trial calendar of District Judge Carol B. Amon.

SO ORDERED.

Dated: Brooklyn, New York
March 2, 2007

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge